IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25/04/2003

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THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION No.18735 OF 1996
and W.P.No. 442 OF 1997
AND
W.M.P.NO.26262 OF 1996
AND
WPMP.NOs.13873 & 18318 OF 2002

Association of NSE Members of India,
Rep. by its Joint Secretary,
Vijay Sambrani,
M-52/2 (10), Ist Main Road,
Besant Nagar,
Madras 600 090. .. Petitioner in WP.18735/96

NSE Members Association,
rep. by its Secretary,
146/3, Royapettah High Road,
Mylapore, Madras 600 004. .. Petitioner in WP.442/1996

-Vs-

1. Union of India,
Rep. by its Secretary,
Ministry of Finance,
New Delhi.

2. Securities Exchange Board
of India, Rep. by its
Chairman, Nariman Point,
Bombay 400 021.

3. National Stock Exchange of
India Limited,
Rep. by its President,
Mahindra Towers, □A□ Wing,
Worli, Bombay 400 018. .. Respondents in both WPs

Petition filed under Article 226 of the Constitution of India for

issuance of a Writ of Declaration as stated therein.

For Petitioner :: Mr.P.L. Narayanan
For Respondent 1:: Mr.S. Gajendran, ACGSC

Respondent-2 : Mr.V.M. Shivakumar

Respondent-3 : Mr.A.S. Kailasam

:J U D G M E N T

W.P.No.18735 of 1996 has been filed by an individual stock broker, who is a member of National Stock Exchange of India, the third respondent in the said writ petition. The connected W.P.No.442 OF 1997 has been filed by National Stock Exchange Members Association, rep. by its Secretary. The prayer in W.P.No.18735 of 1996 is to the following effect :-

" . . . issue a writ of declaration or any other writ in the nature of declaration or such other appropriate order, declaring that section 12 of the Securities and Exchange Board of India act, 1992 (act 15 of 1992) regulation 10 and Schedule III of the Security Exchange Board of India (Stock Brokers and sub brokers) regulations, 1992 as void and ultravires the constitution of India and also pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice."

The prayer in the connected writ petition is also substantially the same.

2. It appears that many such writ petitions had been filed in different High Courts seeking similar relief. Ultimately, on behalf of Securities and Exchange Board of India, the respondent No.2 Transfer Petition (Civil) No.294 of 1999 was filed before the Supreme Court and the following order was passed on 10.12.1999:-

Keeping in view the fact that similar petitions are pending all over the country we direct that Civil Writ No.126 of 1993 in the matter of BSE Brokers Forum and others vs. SEBI & Ors. and other connected pending matters of the Bombay High Court be transferred to this Court. Hearing of other petitions in the High Courts are stayed but the petitioners therein will be at liberty to apply for intervention in the transferred case. . . ."

3. Various writ petitions in various High Courts including the present writ petitions had remain stayed. The case which was transferred to the Supreme Court was decided on 1.2.2001, as per the decision reported in 2001(3) SCC 482 (BSE BROKER'S FORUM, BOMBAY AND OTHERS v. SECURITIES AND EXCHANGE BOARD OF INDIA AND OTHERS). The Supreme Court dismissed the writ petitions subject to the directions contained in the said judgment. After disposal of the aforesaid case in the Supreme Court, the writ petitions which had remain stayed in this Court were listed and were disposed of in accordance with the decision rendered by the Supreme Court in the reported decision. However, in the present writ petitions, two miscellaneous petitions for amendment were filed and it was contended that in view of the contentions

raised in the petition for amendment, the matter should be decided afresh.

4. The petitioners have sought to include three paragraphs in the petition and additional prayer in the prayer portion. It is convenient to extract the proposed amendment :-

20. For all these reasons and circumstances, I respectfully submit that the very basis and the gravamen of the levy which is found on the concept of turnover and annual turnover in itself indefinite and capable of multiple interpretation resulting in consequential levy being arbitrary and indefinite. This is clearly violative of Article 14 of the Constitution of India.

21. I respectfully submit that if the SEBI is allowed to collect fees without adhering to the netted out process i.e., aggregate of the sale and purchase price of securities received and receivable in respect of sale and purchase or dealing in securities and not merely on basis of both purchase and sale transaction of a stockbroker then it would result in the stock broker, after meeting all overheads and after paying the fees on turn-over basis to the SEBI, the the SEBI intending to collect, it will result in the brokers winding up their business. Therefore, it is clearly violative of Article 19(1)(g) of the Constitution of India.

23. I respectfully submit that if SEBI is allowed to collect fees in the manner it is intending to do taking both sides of the transaction without resorting to amounts received and receivable by a stock broker, it will result in illegal refusal of the registration with SEBI and consequently result in the stock broker losing out his trading membership with the National Stock Exchange and thus losing out his property without authority of law which is clearly violative of Article 300(A) of the Constitution of India.

In the circumstances it is further prayed that this Hon□ble Court may graciously be pleased issue a Writ of Mandamus or any other writ or writs in the nature of mandamus directing the 2nd Respondent to compute the annual turnover of a Stock Broker for the purpose of registration under Section 12 of the SEBI Act, 1992 on netted out amount i.e. aggregate of the sale and purchase price of securities received and receivable in respect of sale and purchase or dealing in securities and not merely on basis of both purchase and sale transaction of a stockbroker and consequently restrain the 2nd Respondent from insisting for payment of any further fees from each of the members of the Association of NSE Members of India the Writ Petitioner, for registration and continuation of registration with the 2nd Respondent on any other basis of computation other than as stated herein above and pass such further or other orders as this Hon□ble Court may deem fit and proper and thus render justice.□

5. Learned counsel appearing for the respondents has vehemently opposed the prayer for amendment on the ground that in view of the decision of the Supreme Court, the writ petitions must be disposed of in accordance with the said decision and it is impermissible to amend the writ petition at this stage which may have the effect of nullifying the judgment of the Supreme Court.

6. Learned counsel appearing for the petitioners has submitted that amendments are necessary in view of the events which have occurred after the decision was rendered by the Supreme Court and therefore, amendments may be allowed in order to avoid multiplicity of proceedings. He has placed reliance upon the decision reported in A.I.R. 1974 SC 1178 (SHIKHARCHAND JAIN v. DIGAMBER JAIN PRABAND KARINI SABHA AND OTHERS), wherein while considering the question of prayer for amendment in an appeal pending before the Supreme Court, it was observed :

. . . Ordinarily, a suit is tried in all its stages on the cause of action as it existed on the date of its institution. But it is open to a Court including a court of appeal to take notice of events which have happened after the institution of the suit and afford relief to the parties in the changed circumstances where it is shown that the relief claimed originally has (1) by reason of subsequent change of circumstances become inappropriate; or (2) where it is necessary to take notice of the changed circumstances in order to shorten the litigation, or (3) to do complete justice between the parties. (See RAI CHARAN v. BISWANATH AIR 1915 CAL 103).

7. Learned counsel for the petitioners has also placed reliance upon the decision reported in 2000(I)CTC 163 (B.K.N. PILLAI v. P. PILLAI) relating to prayer for amendment during pendency of the appeal and it was observed by the Supreme Court that the power to allow amendment can be exercised at any stage of proceedings in the interest of justice on the basis of the guidelines laid down by various High Courts and this Court.
8. The above proposition of law relating to consideration for prayer of amendment by an appellate court while the matter is pending in appeal before such court, obviously is not applicable to a case where a court is required to dispose of the matter strictly in accordance with the decision already rendered by the appellate authority.
9. Under Article 139-A of the Constitution, where cases involving the same or substantially the same questions of law are pending before the Supreme Court and one or more High Courts or before two or more High Courts, the Supreme Court is empowered to withdraw the case or cases pending before the High Court or the High Courts and dispose of the cases.

10. In the present case, it is not disputed that in fact one such case had been transferred and a specific direction had been issued by the Supreme Court staying all other cases pending before various High Courts leaving it open to others to intervene in the matter pending before the Supreme Court. As a matter of fact, many such petitioners, who had filed cases before different High Courts, had intervened in the matter and had been heard by the Supreme Court. Sri. P.L. Narayanan, the present counsel for the writ petitioners, was also heard on behalf of some of such interveners before the Supreme Court, as it is apparent from the decision of the Supreme Court. When the Supreme Court had transferred one case and had stayed all other cases pending before different High Courts, the obvious implication is that on disposal of the case before the Supreme Court, all other cases must be disposed of in the same manner. To permit the petitioners to raise questions with a view to come to a different conclusion is neither contemplated under Article 139A nor under Article 141 of the Constitution of India, which

provides that the law declared by the Supreme Court will be binding on all courts within the territory of India.

11. The contention to the effect that certain questions have not been decided by the Supreme Court cannot be countenanced as any such attempt would amount to seeking review of the decision of the Supreme Court before the High Court.

12. In 1963 SC 151 (SMT. SOMAWANTI AND OTHERS v. THE STATE OF PUNJAB AND OTHERS)it was observed that the binding effect of a decision does not depend upon whether the particular argument is considered or not, provided that the point with reference to argument which was subsequently advanced was decided.

13. What is true in respect of the Supreme Court is obviously more so in respect of High Court. Since one of the matters has been transferred to the Supreme Court and a decision has been rendered, the High Courts, wherever such cases were pending and had been stayed, are bound to follow the decision of the Supreme Court.

14. Law is well settled that even when a matter is remanded by an appellate court to a lower court, amendment to take away the effect of such remand shall not be permitted. The principle applicable in such cases would be applicable with more vigour in respect of cases which are to be decided in accordance with the principles enshrined in Article 139-A of the Constitution.

15. For the aforesaid reasons, the petitions filed for amendment must be rejected. Once such petitions for amendment are rejected, there is no escape from the conclusion that the writ petitions are to be disposed of in accordance with the decision rendered by the Supreme Court in 2001(3) S.C.C. 482 (cited supra). Accordingly, the writ petitions are dismissed in the light of and subject to the observations made in the said decisions. No costs. Consequently, WMP.No.26262 of 199 6 is closed.

Index : Yes
Internet : Yes
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To

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